

Brownfields Program Guidelines and Issue Resolutions December 2017

This document is provided as guidance for the brownfields agreement process. In this document, we set out provisional interpretations of those parts of the brownfields statute that the regulated community has indicated are unclear or that have been amended by legislative act since the law was enacted.

TABLE OF CONTENTS:

[ISSUE 1: PURPOSE OF THE ACT](#)

[ISSUE 2: RELATIONSHIP TO VOLUNTARY CLEANUP PROGRAM](#)

[ISSUE 3: PUBLIC BENEFIT](#)

[ISSUE 4: FEDERAL SUPERFUND SITES](#)

[ISSUE 5: SUBMISSION OF REPORTS AND FEES](#)

[ISSUE 6: GROUND WATER AND SOIL REMOVALS](#)

[ISSUE 7: GROUND WATER RECEPTORS](#)

[ISSUE 8: UNDERGROUND STORAGE TANK PROGRAM](#)

[ISSUE 9: INSURANCE AS SAFETY](#)

[ISSUE 10: PERMITS](#)

[ISSUE 11: LIABILITY PROTECTION](#)

[ISSUE 12: OWNER/OPERATOR VS. BUYER AS PROSPECTIVE DEVELOPER](#)

[ISSUE 13: CHOOSING THE BEST BROWNFIELDS PROGRAM OPTION](#)

[ISSUE 14: AVOIDING SPEED BUMPS, ROAD BLOCKS AND OFF-RAMPS](#)

[ISSUE 15: SOIL IMPORT/EXPORT](#)

ISSUE 1: PURPOSE OF THE ACT ([back to top](#))

The Brownfields Property Reuse Act (the Act) of 1997 is intended to encourage and facilitate the redevelopment of abandoned, idled, or underused properties that have actual or perceived environmental contamination by removing barriers to redevelopment posed by the prospective developer's (PD's) potential liability clean-up costs. The Act is not intended to circumvent practical or necessary remediation of properties under any state or federal cleanup program. The Act is clearly intended for sites at which legitimate redevelopment is both planned and possible. Brownfields agreements are only appropriate when a PD commits to a redevelopment project which the Department believes will have public benefit and will leave public health and the environment protected. Brownfields agreements are not appropriate for situations involving only cleanup, or even situations involving cleanup and conveyance, but no redevelopment. ***The Department intends to use the discretion provided for in G.S. § 130A-310.32 to enter into brownfields agreements only for properties with legitimate redevelopment projects where the Department perceives that cleanup liability is a significant impediment to the property's redevelopment.*** A brownfields agreement is appropriate for a non-causative buyer, seller, or owner of a candidate brownfields property when liability relief is necessary for the redevelopment of the candidate property to proceed, and there is sufficient public benefit (see Issue 3) as a result of this redevelopment of the candidate brownfields property. The Department intends to interpret the provisions of the Act ***as broadly as possible*** to provide liability relief for as many redevelopment projects as possible. ***The Department cautions, however, that the submission of a Brownfields Property Application and the Department's initiation of the review of technical data does not guarantee that the Department will enter into a brownfields agreement, nor is there a guarantee of obtaining a Brownfields Agreement for a property under any of our options within a set time table.***

ISSUE 2: RELATIONSHIP TO VOLUNTARY CLEANUP PROGRAM ([back to top](#))

The Department recognizes that the Brownfields Program provides a mechanism that is a part of the overall effort to redevelop contaminated sites in North Carolina. Many of the sites addressed by the

Voluntary Cleanup Program (VCP) within the Inactive Hazardous Sites Branch (IHSB) are cleaned up for the purposes of property transfer and/or redevelopment and transfer. Both the Brownfields Program and the VCP can result in the redevelopment of contaminated brownfields properties. The difference between the two programs lies in whether the party seeking entry into the program did or did not cause or contribute to the contamination at the site. The Brownfields Property Reuse Act (the Act) of 1997 allows only those parties who did not cause or contribute to the contamination, called prospective developers (PDs), to enter the Brownfields Program and participate in its benefits, including the property tax incentive. It sets forth public policy that allows the Department to treat a PD differently than it treats the polluter of the property. In making this separation clear, the Act allows the Brownfields Program to work with PDs toward the safe redevelopment of sites and provides PDs unprecedented regulatory flexibility, liability protection, and the property tax incentives that are unavailable to polluters participating in the VCP.

The State's VCP provides a means for parties who are responsible for site contamination to voluntarily achieve final remediation of a site. Whereas the State's Brownfields Program is primarily a redevelopment initiative, the VCP is fundamentally a cleanup program. Because VCP site cleanups restore value to formerly contaminated properties, and enable lenders to make conventional (collateral) loans for redevelopment or expansion, the VCP is also an integral part of successful redevelopment. Under the VCP, the remedy may, in certain circumstances, involve alternate cleanup standards and institutional controls. Barring severe site hazards, the Department will place oversight of the voluntary cleanup under the privatized portion of the voluntary cleanup program, known as the Registered Environmental Consultant or "REC" Program. RECs are responsible both for conducting the cleanup and for certifying its regulatory compliance in place of state oversight. Statutorily authorized rules for this program are designed to accomplish a complete cleanup and address all contaminated media.

In contrast to VCP projects, brownfields projects require site-specific decisions about restricting assessments for certain media and about determining protective engineering and institutional measures, and require the Department to then weigh these factors against the potential public benefits of the redevelopment. In addition, under the Brownfields Program the Department provides a brownfield agreement that both defines and limits the PD's liability for cleanup at the site. ***For these reasons the Department necessarily must be directly involved in making these judgments and in ensuring all decisions and protective measures are properly designed and implemented.***

Though rare, it is also important to realize that there can be some sites that enter the brownfields program at which there may be ongoing or planned cleanups under the IHSB or other cleanup programs. At certain high priority sites where this occurs, the prospective developer's redevelopment schedule could potentially be affected if the planned redevelopment schedule would affect the cleanup processes (for example, access issues to known source areas.).

ISSUE 3: PUBLIC BENEFIT [\(back to top\)](#)

G.S. § 130A-310.32(a)(3) requires that a prospective developer (PD) provide the Department with information necessary to demonstrate that the proposed redevelopment will have "public benefit commensurate with the liability protection provided." While the public benefit may be difficult to quantify, in its Brownfields Property Application the PD must provide as detailed a description of such benefits as possible. Public benefits have included such factors as job creation, tax base improvements, revitalization of blighted area, improved retail shopping opportunities, as well as potential cleanup activities or project set-asides that have community or environmental benefits. Redevelopment designs that solely benefit a private party, such as an expansion of a private parking lot, are generally not considered to provide sufficient public benefit. Consistent with the statute, the Department intends to agree to a brownfields redevelopment project at those properties where reuse is clearly to the public's benefit, and where the public feels protected by the terms of the agreement and views the redevelopment as a positive step for the local community.

In general, the Department would like to see letters of support for the proposed redevelopment from a local governmental unit(s) (city, county, etc.) and community groups. The Department believes the best evidence and demonstration of perceived public benefit is that provided by local community groups representing the people living and working in areas adjacent to the proposed redevelopment, who submit letters of support describing the public benefits in terms that relate to improving the quality of life for the neighboring communities. The inclusion of such support letters with the Brownfields Property Application is recommended and encouraged.

The Department does not intend to refuse to enter into a brownfields agreement based solely on a lack of letters of support included with the Brownfields Property Application. Rather, letters of support from the public and from local governments, whether submitted with the Brownfields Property Application or during the public comment period, will help guide the Department in considering whether to enter into an agreement. **However, the Department will give priority in the allocation of its resources to those projects that demonstrate the most benefit to the community and that have the strongest local support.** The Department strongly recommends that PDs enlist the support of the local government, community and environmental groups as early in the redevelopment process as possible.

ISSUE 4: FEDERAL SUPERFUND SITES ([back to top](#))

G.S. § 130A-310.37(c) prohibits the Department from entering into brownfields agreements for federal Superfund sites. This prohibition will leave eligible for a brownfields agreement most properties that are not priorities for the US EPA, notably those sites formerly listed on the US EPA CERCLA Information System (CERCLIS) as having no further remedial action planned (NFRAP) and lightly contaminated properties not listed on CERCLIS. There are some properties, however, that are heavily contaminated, or that pose a great health or environmental risk. These properties are noted on CERCLIS as sites in the nation that pose the highest risks and that have thus been listed on the National Priorities List (NPL). These properties remain under the jurisdiction of the US EPA. Under the present federal law, any responsible party, including any "non-innocent" owner, at one of these properties may be held jointly and severally liable for the entire cost of cleanup of the property. Therefore, the Department will not enter into a brownfields agreement for any part of a property that lies within a NPL site.

Additionally, there are sites listed on CERCLIS, called NPL-caliber sites, which, pending further investigation, are likely to be listed on the NPL, and others, called response action properties, that have had response actions funded and conducted by the US EPA. Because federal liability will remain an issue for these sites, a brownfields agreement between the Department and a prospective developer will not entirely define the cleanup liability. For this reason, the Department will consider brownfields agreements on NPL-caliber sites and response action properties only with the knowledge and involvement of the US EPA. Note that the US EPA "Guidance On Agreements with Prospective Purchasers of Contaminated Property" explains the circumstances under which the US EPA may enter into an agreement with a prospective purchaser for an NPL, NPL-caliber, or response action site.

ISSUE 5: SUBMISSION OF REPORTS AND FEES ([back to top](#))

All environmental documentation such as technical reports, work plans, laboratory data, environmental management plans, or others either supporting the BF application, or any provided to NC DEQ as a result of a BF request shall be submitted **ONLY** by electronic means to Shirley Liggins at shirley.liggins@ncdenr.gov if not yet assigned to a project manager, or to your assigned project manager at their email address. Valid electronic delivery options are: by email, CD, or by a document download application. Hard copy documentation **will not be accepted** and will be recycled.

Since the inception of the BF program, we have added flexibility in the number of ways a BFA could be obtained based on common situations our PDs have experienced over the years. These options are: 1) Standard, 2) Redevelopment Now, and 3) Ready for Reuse Program. Each of these options is best suited to a specific purpose and has a separate fee structure, which is presented in the following table:

BF Option	Initial Fee	Initial Fee Due	Final Fee	Final Fee Due
Standard	\$2,000	LOE Received	\$6,000	End of 30-day public comment period
Redevelopment Now	\$30,000 ¹	With application	NA	NA
Ready for Reuse	\$7,500	LOE Received	\$7,500	End of 30-day public comment period

¹ Eligibility is usually granted with most applications; however, in the event we find the application ineligible, the full \$30,000 fee will be refunded to the appropriate party.

G.S. § 130A-310.39(a)(1) requires that "A prospective developer who submits a proposed brownfields agreement for review by the Department" pay an initial fee of two thousand dollars (\$2,000). As a matter of practicality and convention under most of the BF options, the Department will prepare and submit to the prospective developer (PD), or if a Ready for Reuse project, to the PD proxy for review a draft brownfields agreement that is acceptable to the Department. For the standard BF option, the initial \$2,000 fee is due at the time the Department issues a Letter of Eligibility to the PD. Further negotiation, no matter the option chosen, between the Department and the PD regarding the terms of the agreement will be predicated on the Department's receipt of the applicable initial fee (see table above).

A second fee, if applicable to the selected option, that defrays the full cost to the Department and the Department of Justice (in cases where legal support is supplied by DOJ) is due prior to executing the brownfields agreement, which we have interpreted to be the end of the 30-day public comment period. Regarding this second fee, PDs should be aware that, at the present time, the services provided by the Brownfields Program are partially defrayed by a federally funded grant, but the availability of those funds has been declining and that there are no state funds appropriated for any of the technical guidance or legal review provided by the Department and/or the DOJ for this Program. Furthermore, the fees must cover the state's cost not just for developing agreements, but also for long term costs for monitoring land use restrictions in perpetuity.

At this time, the second fee as provided for under G.S. § 130A-310.39(a)(2) can be satisfied in a number of ways, depending on the program option the PD has chosen. Under the standard process, this secondary fee is currently set through cost averages for brownfields agreement development at \$6,000. Under the expedited Redevelopment Now program option where fees alone defray all costs and no federal resources are used, the fee for a nearly dedicated project manager is \$30,000 (**if such a project manager is available at the time of application**). Entities ineligible themselves to be a PD, but are in the Ready for Reuse Program option and are paying fees on behalf of a future PD, pay a total of \$15,000 in two installments.

In order to comply with the BF statute, if the Department or in cases where legal support is supplied by the Department of Justice (DOJ), the DOJ, either singly or combined, incurs higher costs than provided in the fees above, the Department reserves the right to request from the PD a fee equal to all costs incurred from such time until the agreement is complete and signed. After the agreement is signed the Department will not ask for full cost fees retroactively. All checks should be made payable to NC DEQ. Payment should be mailed to: NC Division of Waste Management, ATTN: Shirley Liggins, 1646 Mail

Service Center, Raleigh, NC 27699-1646. Please note that we are working on adding an electronic payment option. Please check our website periodically or speak to your project manager to determine if this option would be available to you.

ISSUE 6: ADDRESSING ENVIRONMENTAL MEDIA [\(back to top\)](#)

The Department will consider entering into brownfields agreements for properties where environmental media are contaminated in excess of unrestricted use standards, and will generally allow the prospective developer to refrain from cleaning up contaminated media if the contamination poses no unacceptable risk to people or the environment. Some properties, however, may contain highly contaminated areas where a redevelopment plan may eliminate risks to people, but may not eliminate significant risks to the environment or to the long-term safety of the redevelopment. Although a redevelopment design may eliminate these areas as risks to people using the property, such areas may remain a continuing source of groundwater contamination, reduce the margin of safety provided by the redevelopment design, or jeopardize the permanence of the agreement. As an example, some properties may have leaking underground storage tanks (USTs), petroleum products or other contaminants floating on top of the ground water, contain pockets of highly contaminated soils, or pose a vapor intrusion (VI) risk.

While remediation or mitigation may not be required at many brownfields properties, the remediation of highly contaminated areas will decrease the likelihood that the agreement will be reopened in the future due to an increased calculated risk, and will reduce the chance of third party lawsuits. In sum, the Department believes that it is in the best interest of the public to clean up or mitigate the environmental risks of these highly contaminated areas whenever practical and will, where applicable, specify in the brownfields agreements that those areas are to be cleaned up accordingly.

ISSUE 7: GROUND WATER RECEPTORS [\(back to top\)](#)

To develop or redevelop properties where groundwater contamination exists, it is important to identify and eliminate any completed exposure pathway from the contaminated groundwater to any "receptor." Receptors in this sense include not only wells that supply people with groundwater for drinking, cooking, bathing and so forth, but also other avenues whereby contaminated groundwater, or volatiles from contaminated ground water, can reach people. These include basements, utility manways and chases, storm sewers, other underground utilities, drains, and surface water flows and seeps. The brownfields process will generally require the identification, by conducting a thorough receptor survey, and elimination of all identified completed exposure pathways by which people could be exposed to contaminants in the groundwater.

ISSUE 8: UNDERGROUND STORAGE TANK PROGRAM [\(back to top\)](#)

Amendments to the Brownfields Property Reuse Act of 1997 made in 2013 allow for those properties which fall under Part 2A of Article 21A of Chapter 143 of the General Statutes (the Underground Storage Tank Program) to be eligible for brownfields agreements. The Department recognizes that USTs pose contamination and safety issues at many properties, and that their remediation should be addressed concurrently with any plans for redevelopment under a brownfields agreement. It is the policy of the program that releases from USTs may be assessed and remediated or addressed in the normal brownfields risk-based manner.

However, if under Trust Fund Guidelines such reimbursement is available to the prospective developer and they decide to seek reimbursement from the UST Trust Fund under Trust Fund Guidelines, the prospective developer must conduct the cleanup action under UST program guidance in accordance with UST Rules governing such remediations in order to be eligible for UST Trust Fund reimbursement. Should the prospective developer decide to do this, such remediations guided by the UST Program

under its normal processes can still be included as provisions in brownfields agreements. Regardless, if potential reimbursement under the UST Trust Fund is something the Prospective Developer wishes to explore, they should discuss that possibility with the UST Program.

Prospective Developers should note that closure of abandoned USTs is a regulatory requirement of tank owners (the PD may or may not be the tank owner, depending on the site circumstances) and not a remedial action. Hence, tank closure requirements, if they exist, remain unaffected by brownfields agreements and any USTs found on brownfields properties must meet these requirements.

Some properties that are candidates for a brownfields agreement may have had USTs removed but may not have had the residual soil contamination remediated to standards. In such cases, the PD may not be responsible for cleanup of residual UST contamination unless such cleanup is necessary to protect public health and the environment consistent with the brownfields statute.

In certain cases, the NC DEQ UST Section has placed a Notice of Residual Petroleum (NORP) on a property, which has associated land use restrictions. Sometimes these land use restrictions may be in conflict with BFA land use restrictions. Under certain circumstances and after discussion with the UST Section, the BF program land use restrictions can supersede those that have already been placed on the property. It is possible that there are existing land use restrictions on a brownfield property from other sources. ***It is imperative that these are fully disclosed to the Brownfields Program in the Brownfields Property Application as they may impact the planned redevelopment.***

ISSUE 9: INSURANCE AS SAFETY [\(back to top\)](#)

Brownfields agreements are designed to allow redevelopment of contaminated properties provided the properties can be made safe for their intended reuse. The Department recognizes that properties can be made safe in various ways, such as engineered controls, institutional controls, soil or ground water removals or cleanups, vapor intrusion mitigation, and impervious caps. There have also been suggestions for contingency plans, in case the agreed upon methods do not work or fail in the future, and for insurance policies covering expenses for future harm caused by the redevelopment. The Department considers many of the methods by which prospective developers intend to protect those people working and living on or near redeveloped properties as viable ways to make properties safe. However, the Department does not consider methods to compensate people for harm caused by unsafe redevelopment as legitimate ways to make properties safe for the intended reuse as required by the Act.

ISSUE 10: PERMITS [\(back to top\)](#)

There is nothing in the Brownfields Property Reuse Act of 1997 that relieves the prospective developer from having to obtain any and all applicable permits, licenses, and approvals for any Brownfields Property response actions or redevelopment.

ISSUE 11: LIABILITY PROTECTION [\(back to top\)](#)

One of the major benefits to prospective developers (PDs) who enter the Brownfields Program, but which is generally unavailable to those in cleanup programs, is the liability protection offered in the form of a covenant-not-to-sue contained in a fully executed and recorded brownfields agreement. Once the "safe-making" actions specified in the executed brownfield agreement are completed, liability protection is automatically in force which protects the PD from enforcement action by the Department for remaining contamination known to exist at the site prior to its redevelopment (it is important to note that the agreement does not provide liability protection concerning future site contamination for which the PD or other party may be responsible). Further chemicals that are known to be of concern (COCs) at the property are not allowed to be used by the PD or future owners at the property in their operations. In certain cases the program can review a departure from this policy, but various factors must be thoroughly

considered and be based on sufficient additional information regarding the types of chemicals considered, their storage and handling locations, and other factors. Regardless, the Department must have a sufficiently bright line between old and new contamination and will not allow a situation to exist that complicates future enforcement for new contamination.

Because the brownfields agreement defines the PD’s cleanup liability at the property, and limits that liability to those actions specified in the agreement, it removes the uncertainty regarding site cleanup costs. In this way, the agreements function to provide comfort to lenders or other entities that would not otherwise be willing to offer project funding. The brownfields agreement, then, is the chief mechanism for breaking this common barrier to obtaining redevelopment financing. In their Brownfields Property Applications, PDs must make the case that the liability protection provided by a brownfield agreement is necessary to break such a barrier or is otherwise required for the redevelopment project to proceed.

ISSUE 12: OWNER/OPERATOR VS. BUYER AS PROSPECTIVE DEVELOPER [\(back to top\)](#)

Due to a statute change in 2015, owners of potential brownfields properties who can firmly establish that they did not cause or contribute to the contamination no longer have to sell the property to potentially be eligible prospective developers (PDs) under the brownfields statute, so long as they have a demonstrable desire to redevelop the property. In most cases, owners who did not operate the industrial facility on the property, and, likewise, buyers having no history with the property, will have little difficulty establishing that they did not cause or contribute to the site contamination. However, owners who have operated on the property, or leased it for use by others, will naturally find it much more difficult to prove to the Department that they did not cause or contribute to the contamination at the property. Furthermore, as stated above in Issue 1, the Program will not be used to circumvent statutorily supported efforts by state or federal cleanup programs to enforce against parties responsible for contamination on the property. Therefore, the Brownfields Program’s policy is to provide these cleanup programs the opportunity to enforce against an owner/operator as a potentially responsible party before the Program considers any effort the owner/operator may make to prove, as an applicant PD, that they did not cause or contribute to site contamination. Hence, to maintain consistency with the intent of the law, not interfere with any potential enforcement by state and federal cleanup programs, and use resources efficiently to expedite the redevelopment of these sites, the Department generally encourages a buyer/future owner to apply as the PD rather than have the owner who was the operator of the facility apply as the PD.

ISSUE 13: CHOOSING THE BEST BROWNFIELD PROGRAM OPTION [\(back to top\)](#)

Each BF program option is designed to work best for properties with certain criteria that affect the redevelopment. There are three options. If all the eligibility criteria are met, the options and the critical criteria in choosing which approach are presented in the following table:

Option	Primary Criteria	Secondary Criteria	Prerequisite
Standard	Schedule less rigorous	Fees are less	None
Redevelopment Now	Time Value of Money	Schedule rigorous	Program Capacity
Ready for Reuse	PD not eligible	Site marketability	Significant Public Benefit

ISSUE 14: AVOIDING SPEED BUMPS, ROAD BLOCKS AND OFF-RAMPS [\(back to top\)](#)

The NC Brownfields program is simple in concept with considerable flexibility, but there are details that, if not attended to, can delay the process. Consider likening the BF process to travelling to your destination on the smooth-sailing highway of your choice, with a successfully executed BF agreement equivalent to arrival at your destination. Below, we have collected some of the best examples of avoiding speed bumps, road blocks, and off ramps that although not insurmountable, increase your time, and your

and our, aggravation, before you arrive at your destination: a fully executed BFA. Consider using the following as sort of a time-saving checklist of advice to use throughout the process:

Preparation of the Application

- 1) Completely fill out the application with all the requested information, including financial documentation and demonstration of hindrance to property redevelopment.
- 2) Appropriately prepare the affidavit with the PD entity's name after IN THE MATTER OF:, ensuring that all the parcel numbers and addresses describing the candidate BF property are present, and that the form is properly signed and notarized.
- 3) Provide available environmental reports, inclusive of all tables, figures, and appendices with the application. Make sure these are LEGIBLE at the resolution that you provide in your pdf.
- 4) Ensure that the perimeter of the candidate BF property is clearly demarcated on a map with the application.
- 5) Check the county tax authority's online database if available to ensure that the information re: parcel numbers, property owner, etc. match the application. If they don't do to recent transfer or other reason, point that out to us on the application or cover letter.
- 6) Ensure that the PD entity is registered with the NC Secretary of State, The State of NC cannot enter into an agreement with a party that is not registered with the NC Secretary of State.

Assessment

- 1) Conduct assessment scopes of work after made eligible and with BF project manager input. We of course accept older assessment reports for background information, but once the PD has been made eligible for the program, include your BF PM in the discussion of assessment data gaps and scoping of any assessment data gathering efforts. We have seen wasted resources on obtaining data the BF program does not need.
- 2) Be sure to obtain approval on your work plan before mobilizing to the field. Communicate any critical scheduling issues with your BF PM.
- 3) Communicate with your analytical laboratory about the appropriate reporting levels based on the appropriate standard or screening level for the medium being analyzed.
- 4) Ensure that you use the most current standard or screening level table.
- 5) Ensure that the correct standard or screening levels are selected for comparison with your site data: NC 2L (groundwater), NC 2B (surface water), PSRGs (soil or sediment), VISLs (groundwater, soil vapor or sub-slab vapor, or indoor air or crawl space).
- 6) Submit the laboratory data in advance of the full report to your BF project manager so that the data for the BFA can be compiled without waiting for the full report. The full report is still necessary for our review, but this parallel tracks the BF project manager and consultant's paths.
- 7) Evaluate environmental risk through use of the risk calculator tools available through DWM, using a process that is consistent with DWM's process.

Survey Plat

- 1) Start the BF survey plat as soon as possible. Share the most recent BF survey plat checklist with the surveyor. Have the surveyor contact the BF PM or the Geodetic Survey if there are any questions. Certain features will not be available until later in the process; however, once the surveying components are done, we can send the plat to the NC Geodetic Survey for their review, and complete the plat in an iterative process from there.
- 2) Double check the draft plat against the most recent BF Survey plat checklist. Ensure that changes are made before it is submitted to the BF project manager.

BFA Preparation

- 1) Depending on the option that is appropriate, once the assessment data is available, the BF PM will complete a draft, have it internally reviewed, and then will send to the PD.
- 2) The PD representative and the BF project manager will negotiate the language of the agreement. To avoid process delays, the program has developed shell language for standard land use restrictions to address issues we have observed in hundreds of agreements. If there is a risk

issue that is addressed by this standard language, the BFA drafted by the project manager will use this standard language. We strongly recommend using this standard language honed through more than 15 years of developing brownfields agreements. Any edits you propose to the legal shell document may require DEQ/DOJ legal counsel review before proceeding with the remainder of the BF process and this can add significant delays. Of course, if there is a unique risk issue at a site that is not already addressed by standard language, we will develop new language for that issue that is subject to negotiation.

- 3) Once the PD and the BF project manager have agreed to the language of the BFA, the BF project manager will prepare the ancillary documents.

Ancillary & Plat Document Preparation

The ancillary documents are the Notice of Brownfields Property (NBP), the Notice of Intent (NI), and the Summary Notice of Intent (SNI). Once the BFA language is agreed upon, the ancillary documents can be drafted. The plat should be in progress at this stage, but cannot be completed until the data tables from the BFA, the sample locations from the data tables in the BFA, and the land use restrictions from the NBP are added.

- 1) Discuss with your BF project manager the following:
 - a. The location of a public repository near the BF property where the full BF document package will be available for review by members of the public during the 30-day public comment period. This is typically a library closest to the site.
 - b. The number of days you estimate it will take you to complete the public notice tasks. This is typically seven (7) days, but could be longer depending on the availability of resources for these tasks.
- 2) Provide your project manager a list of the contiguous property owners and local authorities who will be receiving the SNI or the full NI that includes the entire BF documentation package.
- 3) Provide the mylar version of the final plat, and an electronic version of the mylar signed and sealed by the surveyor to the BF PM by the end of the 30-day public comment period.

ISSUE 15: Soil Import/Export ([back to top](#))

Whether through necessary cut or fill requirements during construction or for other reasons, brownfields properties may need to import or export soil to/from the property. It is programmatically important for a few principles to be maintained during soil import/export operations:

- 1) Applicable regulatory requirements for movement of contaminated soils must be complied with. Such requirements are not administered by the Brownfields Program per se, but may be subject to regulation by various other regulatory programs. As such, it is the PD's responsibility to ultimately comply with applicable regulations.
- 2) As a result of the import/export of soil the brownfields property (and any property which receives soil from the brownfields property) must remain suitable for the uses intended while fully protecting public health and the environment.
- 3) The program must know where exported soils are taken and understand their final disposition.
- 4) Documenting imported soils with chemical analyses safeguards the liability protections provided by the brownfields agreement and are in everyone's best interest.
- 5) Contaminated soil is soil to which contaminants have been released. Therefore, contaminated soil does not include soil with elevated naturally occurring metals or other naturally occurring substances. Contaminated soil is that which contains contaminant levels above unrestricted use levels (currently the IHSB PSRGs). Uncontaminated soil

contains levels below unrestricted use levels. The term “uncontaminated soil” takes on meaning under the beneficial fill rule:

15A NCAC 13B .0562 BENEFICIAL FILL

A permit is not required for beneficial fill activity that meets all of the following conditions:

- (1) The fill material consists only of inert debris strictly limited to concrete, brick, concrete block, uncontaminated soil, rock, and gravel.
 - (2) The fill activity involves no excavation.
 - (3) The purpose of the fill activity is to improve land use potential or other approved beneficial reuses.
 - (4) The fill activity is not exempt from, and must comply with, all other applicable Federal, State, and Local laws, ordinances, rules, and regulations, including but not limited to zoning restrictions, flood plain restrictions, wetland restrictions, mining regulations, sedimentation and erosion control regulations. Fill activity shall not contravene groundwater standards.
- 6) Soils that don't meet beneficial fill requirements that are not managed on site must be addressed through an off-site regulated facility that accepts such soils. It is up to that regulated facility to accept the soils under their permit and the Brownfields Program must receive correspondence of said acceptance by the regulated facility, including any and all transfer manifests. It is important to note that under this scenario, the Brownfields Program does not “approve” soils for such facilities. The facilities accept soils that they deem meet their regulatory requirements.

Contact your project manager for site specific guidance for your project regarding the use of the above guidelines.